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2003 APR 17 P 3:39

CLERK'S DISTRICT COURT
DISTRICT OF NEVADA

BY  DEPUTY

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CV-S-03-0409-DWH-PAL

ZALI, L.L.C., and Indiana
Limited Liability Company dba
ZALI RACING,

Plaintiff,

vs.

NOTICE OF REMOVAL

JUNO-ON-LINE SERVICES INC., and
NET ZERO, INC. and UNITED ONLINE
INC., and DOES I-X, inclusive, and
ROES I-X, inclusive,

Defendants.

TO: UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA; and

TO: ZALI, L.L.C. dba ZALI RACING, Plaintiff; and

TO: DAVID J. WINTERTON, ESQ., its attorney of record

PLEASE TAKE NOTICE that Defendants JUNO-ON-LINE SERVICES,
INC., NET ZERO, INC. and UNITED ONLINE INC. hereby remove the
state court action entitled "ZALI L.L.C. and Indiana Limited
Liability Company dba ZALI RACING vs. JUNO-ON-LINE SERVICES
INC and NET ZERO, INC. and UNITED ONLINE INC. and DOES I-X

1 inclusive, and ROES I-X, inclusive," Case No. A 464174, filed
2 in the Eighth Judicial District Court, Clark County, Nevada.

3 The grounds for removal are:

- 4 1. Plaintiff is a Indiana limited liability company
5 that does business in Clark County, Nevada as ZALI
6 RACING. Defendants are Delaware corporations with
7 their principal places of business in New York and
8 California. The amount in controversy, exclusive
9 of interest and costs, exceeds \$75,000.
- 10 2. This Court has jurisdiction over this action
11 pursuant to 28 U.S.C. § 1332 and 28 U.S.C. §1441(1)-
12 (c).
- 13 3. Venue is appropriate in the unofficial southern
14 division of this Court pursuant to 28 U.S.C. §§
15 1441(a) and 1446(a) and Local Rule 8-1.
- 16 4. True copies of the summons and state court complaint
17 are attached as Exhibit 1 and made a part of this
18 notice by this reference. There have been no other
19 proceedings in state court.
- 20 5. Plaintiff first served copies of the complaint and
21 summons at Defendants' place^s of business on or about ✓
22 March 24, 2003. This notice is timely filed within
23 thirty days of service as required by 28 U.S.C. §
24 1446(b).
- 25
26
27
28

1 6. Defendant has prepared and will this day file with
2 the clerk of the Eighth Judicial District Court a
3 copy of this Notice.
4

5 DATED: April 17, 2003

6 Respectfully submitted,
7 KIRSHMAN & HARRIS, P.C.

8
9 By

Norman H. Kirshman

10 Norman H. Kirshman
11 Robert L. Rosenthal
12 Roger L. Grandgenett II
13 411 E. Bonneville, Ste 300
14 Las Vegas, Nevada 89101

15 Attorneys for Defendants
16
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of April, 2003 the foregoing "NOTICE OF REMOVAL" was served by being placed in an envelope with prepaid postage affixed thereto, sealed and deposited with the United States Postal Service for first class delivery to:

DAVID J. WINTERTON, ESQ.
DAVID J. WINTERTON & ASSOC. LTD.
211 N. Buffalo Drive, Suite A
Las Vegas, Nevada 89145

By: *Lynn A. Vlahos*
Kirschman & Harris, P.C.
411 E. Bonneville, Ste 300
Las Vegas, NV 89101

Ex. 1

Mar-25-03 16:10 From:NETZERO INC.

T-745 P.02 F-281

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ZALI L.L.C. an Indiana Limited Liability)
Company dba ZALI RACING,)

Plaintiff,)

vs.)

JUNO-ON-LINE SERVICES INC. and)
NET ZERO, INC. and UNITED ONLINE)
INC., and DOES I-X inclusive, and ROES)
I-X, inclusive,)

Defendants.)

Case No.:

Dept. No.:

A464174

COPY

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

UNITED ONLINE, INC.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:


a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:
DAVID J. WINTERTON & ASSOC., LTD.

By: 
David J. Winterton, Esq.
Nevada Bar No.0004142
211 N. Buffalo Dr. #A
Las Vegas, Nevada 89145

SHIRLEY B. PARRAGUIRRE, CLERK OF
COURT

By: **ASTOR CHAM**
DEPUTY CLERK
County Courthouse
200 South Third Street
Las Vegas, Nevada 89101



APR 14 2003
Date

NOTE: When service is publication, add a brief statement of the object of the action.
See Rules of Civil Procedure, Rule 4(b)

Mar-25-03 16:10 From-NETZERO INC.

T-745 P.03/13 F-281

1 DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
2 DAVID J. WINTERTON & ASSOC., LTD.
211 N. Buffalo Drive, Suite A
3 Las Vegas, Nevada 89145
(702) 363-0317

4 Attorneys for Plaintiffs

FILED

MAR 4 4 32 PM '03

Shirley J. Longoria
CLERK

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 ZALI L.L.C. an Indiana Limited Liability)
9 Company dba ZALI RACING,)

10 Plaintiff,)

11 vs.)

12 JUNO-ON-LINE SERVICES INC. and)
13 NET ZERO, INC. and UNITED ONLINE)
INC., and DOES I-X inclusive, and ROES)
14 I-X, inclusive,)

15 Defendants.)

Case No.:
Dept. No.:

A464174

XX

16 COMES NOW, Plaintiff, ZALI L.L.C., doing business as ZALI RACING, by and through
17 its counsel DAVID J. WINTERTON & ASSOCIATES, hereby files this Complaint against
18 Defendants, JUNO-ON-LINE SERVICES INC., and NET ZERO INC., a successor in interest
19 of United Online Inc., and represents the following to this Honorable Court:

20 NATURE OF ACTION

21 1. This Complaint is for the collection of \$355,000.00 pursuant to a contract, unjust
22 enrichment and breach of covenant of good faith and fair dealing.

23 JURISDICTION AND VENUE

24 2. This Court has subject matter jurisdiction over this action under § 6, article 6 of the
25 Nevada Constitution.
26 3. This Court has jurisdiction over this matter pursuant to Nevada Revised Statutes § 4.370.
27 4. Venue is proper in this Judicial District under Nevada Revised Statutes § 13.010 and
28 13.040.

Mar-25-03 16:17 From:NETZERO INC.

T-745 P 04/13 F-281

PARTIES

5. The following are real parties of interest pursuant to Nev. R. Civ. P. Rule 17 and have been authorized to bring this cause of action.

6. Plaintiff, ZALI L.L.C. (hereinafter "Zali") an Indiana Limited Liability Company that does business in Clark County, Nevada as ZALI RACING.

7. Defendant, JUNO-ONLINE SERVICES INC., (hereinafter "Juno") is a subsidiary of UNITED ONLINE INC., who does business in Clark County, Nevada.

8. Defendant, NET ZERO, INC., (hereinafter "Net") is a subsidiary of UNITED ONLINE INC., who does business in Clark County, Nevada.

9. Defendant, UNITED ONLINE INC., is a corporation that does business in Clark County, Nevada.

10. The true names and capacities of defendants sued herein as DOES and ROES I through X inclusive, and each of them, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff's will seek to amend this complaint to set forth the true names and capacities of said fictitiously named defendants when the same have been fully ascertained.

GENERAL ALLEGATIONS

11. Zali is a member of the Indy Racing League, with offices and shop facilities in Indianapolis, Indiana and Las Vegas, Nevada.

12. Juno, through their representative, Andrew Cohen, executed a racing advertising sponsorship contract (hereinafter "Contract") with Zali on or about August 9, 2001. See Exhibit 1.

13. The Contract covered four (4) racing events over a two (2) month period.

14. Pursuant to the Contract Zali agreed to supply Juno with a Indy race car, transporter, complete race equipment setup, and knowledgeable race car crew, within a Racing Sponsorship Advertising Program.

15. Zali further agreed to display Juno's name on equipment, uniforms, crowd control barriers, and race car, through the Sponsorship.

Mar-25-03 16:11 From: NETZERO INC.

T-745 P.05/13 F-281

1 16. Zali also provided multiple advertisements for Juno via television, newspaper, media, and
2 Internet pursuant to the Contract.

3 17. Zali complied with each and every term of the Contract.

4 18. In consideration for Zali's services Juno agreed to pay Zali Three Hundred Seventy-Five
5 Thousand Dollars (\$375,000.00).

6 19. Juno paid Zali Twenty Thousand Dollars (\$20,000.00).

7 20. Zali has made continual demands for payment of the outstanding balance of Three
8 Hundred Fifty-Five Thousand Dollars (\$375,000.00).

9 21. Juno refuses to pay Zali Three Hundred Fifty-Five Thousand Dollars (\$355,000.00).

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Contract)**

12 22. The Plaintiff restates and realleges each and every allegation contained in Paragraphs 1
13 through 21 inclusively and incorporates them herein by reference as if fully set forth
14 herein.

15 23. Pursuant to the Contract Zali agreed to provide Juno with a Indy race car, transporter,
16 complete race equipment setup, and knowledgeable race car crew.

17 24. Zali further agreed to display Juno's name on equipment, uniforms, crowd control
18 barriers, and race car.

19 25. Zali also provided multiple advertisements for Juno via television, newspaper, media, and
20 Internet pursuant to the Contract.

21 26. Zali complied with each and every term of the Contract.

22 27. In consideration for Zali's services Juno agreed to pay Zali Three Hundred Seventy-Five
23 Thousand Dollars (\$375,000.00).

24 28. Juno paid Zali Twenty Thousand Dollars (\$20,000.00).

25 29. Zali has made continual demands for payment of the outstanding balance of Three
26 Hundred Fifty-Five Thousand Dollars (\$375,000.00).

27 30. Juno refuses to pay Zali Three Hundred Fifty-Five Thousand Dollars (\$355,000.00).

28 31. Juno refusal to pay Zali is a material breach of the Contract.

Mar-25-03 16:11 From:NETZERO INC.

T-745 P.06/13 F-201

32. Zali is accordingly damaged and entitled to the unpaid balance of Three Hundred Fifty-Five Thousand Dollars (\$355,000.00).

33. Further Zali is entitled to interest on the unpaid balance and all its attorneys fees and costs in pursuing this action.

SECOND CAUSE OF ACTION

(Unjust Enrichment)

34. The Plaintiff restates and realleges each and every allegation contained in Paragraphs 1 through 33 inclusively and incorporates them herein by reference as if fully set forth herein.

35. Zali provided Juno with extensive advertising and exposure of Juno's company name in four Indy care races pursuant to Juno's request.

36. Juno accepted Zali services that provided a benefit to Juno.

37. Juno has retained a benefit from Zali's advertising and exposure of Juno's company name.

38. Juno refuses to pay Zali the sum of Three Hundred Fifty-Five Thousand Dollars (\$355,000.00) for the services performed by Zali.

39. Zali is accordingly damaged and entitled to the unpaid balance of Three Hundred Fifty-Five Thousand Dollars (\$355,000.00).

40. Further Zali is entitled to interest on the unpaid balance and all its attorneys fees and costs in pursuing this action.

THIRD CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

41. The Plaintiff restates and realleges each and every allegation contained in Paragraphs 1 through 40 inclusively and incorporates them herein by reference as if fully set forth herein.

42. Zali and Juno entered a Contract involving a sponsorship of an Indy race car team.

43. Zali complied with each and every term of the Contract.

44. Juno refuses to comply with its obligations in the Contract by not paying Zali Three

Mar-25-03 16:11

From-NETZERO INC,

T-745 P.07/13 F-281

1 Hundred Fifty-Five Thousand Dollars (\$355,000.00).

2 45. Zali has demanded payment of the outstanding balance.

3 46. Zali is accordingly damaged and entitled to the unpaid balance of Three Hundred Fifty-
4 Five Thousand Dollars (\$355,000.00).

5 47. Further Zali is entitled to interest on the unpaid balance and all its attorneys fees and costs
6 in pursuing this action

7 WHEREFORE, Plaintiff prays for relief against the Defendants as follows:

- 8 1. That Zali be awarded damages in the amount of Three Hundred Fifty-Five
9 Thousand Dollars (\$355,000.00);
10 2. That Zali be awarded interest on the outstanding balance;
11 3. For attorneys fess and costs in bringing this action;
12 4. For such other relief as the court deems just and proper.

13 DATED this 5 day of February 2003.

14
15 Submitted by:

16 DAVID J. WINTERTON & ASSOCIATES LTD.

17
18 By: 

19 DAVID J. WINTERTON, ESQ.
20 Nevada Bar No. 004142
21 DAVID J. WINTERTON & ASSOC., LTD.
22 211 N. Buffalo Drive, Suite A
23 Las Vegas, Nevada 89145
24
25
26
27
28

EXHIBIT 1

Mar-25-03 16:12 From-NETZERO INC.

T-745 P.09/13 F-281

Zali Racing
a division of Zali, L.L.C.
Las Vegas, Nevada

Sponsorship Agreement

This agreement is between Juno On-Line Services Inc., referred to as "sponsor" and Zali L.L.C., doing business as Zali Racing, referred to as "Zali."

1. **APPOINTMENT OF TEAM:** The sponsor hereby appoints Zali to represent the sponsor in implementing an Indy Racing League advertisement/sponsorship program on its behalf for the specific race events listed in paragraph 2(b) of this agreement. Zali hereby accepts such appointment and shall act at all times as an independent contractor.
2. **SERVICES TO BE PERFORMED:** The services to be performed include all services customarily performed by a professional Indy Car racing team with regard to sponsorship activities. All services will be performed by Zali, as set forth within this agreement, unless upon receipt from the sponsor in writing, requesting changes (there can be a charge "cost" to sponsor for changes.) An additional list of advertisement benefits is attached as Exhibit "A102," (to be attached listing additional benefits agreed upon) requiring both parties' signatures.
- 2a. **PURPOSE OF CONTRACT:** (a) The purpose of this agreement is to create a binding contract by which Zali shall provide to the sponsor a Indy race car, transporter, complete race equipment setup, and knowledgeable crew, capable of qualifying a race car in the scheduled racing events, which includes practice, qualifying and racing. Zali agrees to display sponsors name on equipment, uniforms, crowd control barriers, and race car, the ~~entire race weekends~~ and whenever race car is on the track during the term of this agreement in the Indy Racing Northern Light 2001 Series. The sponsor shall direct Zali on exactly how the sponsor requires Zali to advertise, promote and expose its company name, products and image illustrated in written and verbal forms, within Zali's racing sponsorship

Mar-25-03 16:12 From:NETZERO INC,

T-745 P.10/13 F-201

responsibilities outlined in this agreement. Exposure shall be in the form of written and logo decals on the Zali's race car, race equipment, transporter and uniforms

2(b). List of scheduled race(s). (attached Exhibit A103 2001 I.R.L. Series.

2(c). "Zali", has contracted with Bill Roc, #81, race car driver, to participate as the Zali Race car driver, in the 2001 Indy Racing Northern Light Series. (see paragraph 12(a).

2(d). Provide sponsor-merchandising rights, opportunity to photograph or film the race car, driver, team and granting of usage rights which shall be in accordance with Zali's standard usage guidelines, attached hereto as Exhibit "A104."

2(e). Driver available to attend sponsor's promotional event(s), including one per race, five for Indy 500-race month.

2(f). Provide (sponsors name, logo) signage on the following:

1. See attached diagram on Exhibit "A101" for decal location.
2. Transporter Yes
3. Pit equipment Yes
4. Crew uniforms Yes
5. Golf carts Yes
6. Other _____

3. PRIOR APPROVAL OF SPONSOR: No obligations shall be incurred by Zali on behalf of the sponsor without first obtaining written approval from the sponsor. All sponsor advertising used by Zali will have written authorization from the sponsor, prior to such use.

4. CONFIDENTIALITY: While this contract is in force, Zali shall not serve as or provide a racing team for any products or additional sponsorship entity without first obtaining written consent from the sponsor. Sponsor shall not unreasonably reject sub sponsorship except in the case of competing like products or services. Zali agrees to treat as private and confidential any and all information relating to the sponsor's business including but not limited to projections, pricing, marketing strategies, customer base, etc., and will not release any such information to any person, firm or institution unless

Mar-25-03 16:12 From: NETZERO INC.

T-745 P.11/13 F-201

specifically directed by sponsor.

5. TIME, CHARGES, EXPENSES AND SERVICES BY ZALI (INCLUSIVE): The sponsor agrees to pay Zali a total payment in the amount of \$375,000.00 U.S. ~~by Pastor Trade~~ via Blair.Com, for this sponsorship agreement and services to be rendered. Payment will be made on sponsor's behalf by Blair.com. Payment is due by (See Blair Sponsorship Agreement), 2001 / The payment pays in full for the terms and conditions of this agreement, representing advertising / sponsorship contract from 8-07, 2001, thru 12-31, 2001, and all races listed in paragraph 2(b).

6 EXPENSES INCURRED BY ZALI: If the sponsor cancels any planned advertising (per this agreement) the sponsor will remain responsible for 100% of the amount set forth in Section 5 above. Any cancellation must be in written form and sent certified mail. There are no refunds if sponsor cancels this agreement, for any reason. Zali cannot cancel this agreement. If Zali is notified of cancellation, Zali's commitment under this agreement stops on that date.

7. DEPOSIT FOR ADDITIONAL OUTSIDE COST, TIME AND CHARGES: Sponsor agrees to pay a deposit of 10% of total advertising costs, if sponsor elects to increase sponsorship activity, which both parties agree to. The deposit can be applied to sponsorship cost by written agreement only.

8. BILLING AND PAYMENT: If Zali invoices its sponsors, for agreed upon additional services, the invoices are due and payable upon receipt. Invoices become delinquent 30 days from the invoices date and are subject to carrying charge of one (1) percent per month of fraction there of that the invoice remains overdue. (any additional services must be approved and signed in written form by both parties)

9. TERM OF CONTRACT: This agreement shall become effective upon signing by both parties and shall continue in force for a period covering the race(s) reflected within this contract or unless otherwise specified below:

December 31, 2001 (4 remaining I.R.L. races)

10. SPONSOR BENEFITS PROTECTED: If for any reason, Zali is unable to deliver any benefits defined in this agreement, it is Zali's contractual responsibility to the sponsor to substitute, make alternative arrangements or

Mar-25-03 15:12 From-NETZERO INC.

T-745 P.12/13 F-281

equipment changes to completely satisfy the sponsorship benefit requirements stated here within, even if there might be additional cost to Zali. These additional costs cannot be charged to the sponsor.

11. ARBITRATION OR DISPUTES: Any controversy of claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

12. PERSONAL NATURE OF CONTRACT: This contract is between the sponsor and Zali and neither party can assign any of its rights or duties to anyone else, without the written consent of the other party.

12(a). If for any reason Zali's race car driver fails to be available in the event(s) described within this contract, Zali agrees to replace the driver contracts with another driver, acceptable to sponsor, but final selection is at the election of Zali. Sponsor will be given three replacement drivers to select from.

13. COMPLETE AGREEMENT: This contract supersedes all prior contracts and understandings between the parties and may not be modified, changed or altered by any promise or statement by whomsoever made and may only be modified by further written agreements signed by all parties thereto.

13(a). NOTIFICATIONS: All correspondence between the parties shall be addressed as follows:

Zali Racing, a division of Zali L.L.C.
c/o Eric Zimmerman
P.O. Box 36417
Las Vegas, NV 89133
(702) 633-4007

Sponsor:
Juno On-Line Services, Inc.
1540 Broadway, 27th. floor
New York, NY 10036

Mar-25-03 16:12

From-NETZERO INC.

T-745 P.13/13 F-281

14. **SEVERABILITY AND GOVERNING LAW:** Each of the provisions of this contract shall be enforced independently of any other provision of this contract. In the event of any dispute arising under this contract, it is agreed between the parties that the law of the State of Nevada would govern the interpretation, validity, and effect of this contract without regard to the place of execution or place of performance thereof.

15. **WAIVER BREACH:** The failure of either party at any time to require the performance of the other of any provision herein shall in no way affect the respective rights of either party to enforce the same, nor shall the waiver by either party of any breach of any provisions hereunder be construed to be a waiver of any succeeding breach or as a waiver modification of the provisions of the contract itself.

16. **ADDITIONAL AGREEMENTS,** can be in hand written form (initials required) Decals for the Kentucky race only will be displayed on the engine cover. The other three (3) races are side pod decal placement. Wing placement for all four (4) races.

17.

Juno On-Line Services

Sponsor:

Date: Aug. 09, 2001

Zali Racing, Eric Zimmerman

President:

Date: Aug. 07, 2001

Agreed this 9th day of August, 2001.

Sponsor Information:

Zali Racing, a division of Zali L.L.C.

Juno Online Services, Inc.

Company name

8-07-01
Eric Zimmerman, Managing Member
of Zali, L.L.C., dba; Zali Racing

Sponsorship name

Representative name and
signature, title

ATC 7/8